

REMARKS

Applicant respectfully requests reconsideration and allowance of claims 1-20 that are pending in the above-identified patent application. In view of the following discussion, Applicant submits that all pending claims are in condition for allowance. Applicant incorporates its remarks from the November 6, 2007 response herein.

Claim Rejections Under 35 U.S.C. § 103(a)

U.S. 5,152,284

Independent claims 1 and 17 require that “the features forming the outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis,” excluding “- fine structures of any seams which are produced by the sealing of the seams of the individual parts of the capsule, and/or - elements formed on the capsule surface which are smaller than 0.1 mm, and/or - angles of taper up to 5°.” The claimed process and structure regarding symmetry results in identical inflow and vibration conditions irrespective of the direction of insertion of the capsule into the inhaler.

Applicant respectfully acknowledges that the Examiner has withdrawn his argument that Valentini discloses a taper of less than 5° in the December 11, 2007 Advisory Action.

In response to Applicant’s November 6, 2007 arguments, the Examiner now alleges in the Advisory Action that the capsule of Valentini meets one of the other exceptions to symmetry, i.e., that the capsule has elements smaller than 0.1 mm. The Examiner alleges “[w]hen two parts of Valentini’s capsule comes into closure the open edge of each part overlaps creating...[slight elevations] which are smaller than 0.1 mm”. The Examiner takes a broad interpretation of “elements” to allege that the elements formed on the capsule of Valentini are smaller than 0.1 mm. Applicant respectfully disagrees with the Examiner’s statements.

Valentini does not disclose or suggest slight elevations smaller than 0.1 mm. Please refer to the Figure submitted with the November 6, 2007 response illustrating that the capsule of Valentini is not excluded from the conditions/requirements of symmetry. The elevations present in Valentini are the discontinuities or steps near the middle of the capsule when the capsule pieces are combined together. One skilled in the art would recognize that the discontinuities or steps in the capsule of Valentini are not smaller than 0.1 mm even when broadly interpreting the claim recitation of

“elements”. As in the earlier July 16, 2007 and November 6, 2007 responses, Applicant submits that the capsule of Valentini does not fall within any exclusion to the conditions of symmetry as claimed in the present invention because Valentini does not disclose or suggest a taper up to 5°, slight elevations smaller than 0.1 mm, and/or fine structures of any seams which are produced by sealing of the seams of the individual parts of the capsule. As such, the elevations of the capsule of Valentini are not excluded from the conditions of symmetry, and, therefore, the capsule is not symmetrical.

In the Advisory Action, the Examiner draws an improper conclusion that because FIG. 8 of the present invention shows a symmetrical capsule with two differently sized parts, the capsule of Valentini containing two differently sized parts is also symmetrical. The capsule in FIG. 8 of the present invention clearly has a different design than the capsule of Valentini. Although the capsule of Valentini and the capsule in FIG. 8 of the present invention contain differently sized parts, with respect to a transverse plane, the capsule of the present invention is symmetrical while the capsule of Valentini is not symmetrical. This is so because of the different capsule designs of the present invention and Valentini. As seen in FIG. 8 of the present invention, when capsule cap 2 is slid over capsule body 3, the resulting structure is symmetrical with respect to a transverse plane. To test this result consider what happens when an image of the top half of the capsule folds at the transverse plane (i.e., the plane which is equidistant from the top and bottom points of the capsule) over an image of the bottom half of the capsule. The images of the top half and the bottom half are symmetrical. In contrast, the capsule of Valentini is not symmetrical when the above test is performed. An image of the top half of the capsule is not uniformly symmetrical with the bottom half of the capsule when folded at the plane which is equidistant from the top and bottom points of the capsule of Valentini. Moreover, the Examiner fails to address the pre-cut holes 42, 44 on one capsule part but not on the other part of the capsule of Valentini that clearly prevent the top half of the capsule from folding over the bottom half of the capsule of Valentini uniformly and thus exclude the capsule of Valentini from being symmetrical. Indeed, Valentini teaches away from a symmetrical capsule.

The Examiner concedes, at page 3 of the October 4, 2007 Office Action, that Valentini lacks a detailed description of the claimed steps; however, the Examiner makes the erroneous conclusion that Valentini discloses the claimed structure. As the claimed symmetry is lacking in the device of

Valentini, it discloses neither the claimed steps (of claim 1) nor the claimed structure (of claim 17). As such, Applicant submits that independent claims 1 and 17 are patentable over Valentini.

As the subject dependent claims include the limitations of the base claim(s), they are likewise patentable. Accordingly, Applicant respectfully requests that the § 103 rejection of the subject claims be withdrawn.

In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited. The RCE and petition fee are included herewith. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

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Respectfully submitted,

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